

The opinion in support of the decision being
entered today is not binding precedent of the Board.

Paper 1

Filed by: Carol A. Spiegel
Administrative Patent Judge
Box Interference
Washington, D.C. 20231
Tel: 703-308-9797
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Filed: March 6, 2002

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

IZUMU SAITO, YUMI KANEGAE
and MICHIO NAKAI

MAILED

Junior Party,
Patent 5,700,470

MAR 08 2002

v.

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

QING WANG, MITCHELL H. FINER
and XIAO-CHI JIA

Senior Party
Application 08/333,680

Patent Interference No. 104,755 (CAS)

NOTICE DECLARING INTERFERENCE
(37 CFR § 1.611)

Part A. Declaration of interference

An interference is declared (35 U.S.C. § 135(a)) between the above-identified parties.

Details of the application(s), patent (if any), reissue application (if any), count(s) and claims designated as corresponding or as not corresponding to the count(s) appear in Parts E and F of this NOTICE DECLARING INTERFERENCE.

Part B. Judge designated to handle the interference

Administrative Patent Judge Carol A. Spiegel has been designated to handle the interference. 37 CFR § 1.610(a).

Part C. Standing order

A Trial Section STANDING ORDER accompanies this NOTICE DECLARING INTERFERENCE. The STANDING ORDER applies to this interference.

Part D. Conference call to set dates

A telephone conference call to set dates for taking action in the interference is scheduled for 2:00 p.m. on May 2, 2002 (the call will be initiated from the PTO).

No later than **two business days** prior to the conference call, each party shall file and serve by facsimile a list of the preliminary motions the party intends to file. See § 17 of the STANDING ORDER.

A copy of a "sample" order setting times for taking action during the preliminary motion phase of the interference accompanies this NOTICE DECLARING INTERFERENCE.

Counsel are encouraged to discuss the order prior to the conference call with the view to coming to some mutual agreement as to dates for taking action. A typical preliminary motion period lasts approximately nine (9) months. Counsel should be prepared to justify any request for a shorter or longer period.

Part E. The parties involved in this interference are:

Junior Party

Named inventors: IZUMU SAITO,
YUMI KANEGAE and
MICHIO NAKAI

Patent: U.S. Patent 5,700,470,
issued December 23, 1997,
based on application 08/615,048,
filed March 12, 1996

Title: Recombinant Adenovirus with Removed E2A Gene and
Method of Preparation

Assignee: SUMITOMO PHARMACEUTICALS COMPANY, LIMITED

Accorded Benefit: of JP application 07-276335,
filed September 29, 1995

of JP application 07-084891,
filed March 15, 1995

Attorneys: See last page

Address: See last page

Senior Party

Named Inventors: QING WANG,
MITCHELL H. FINER and
XIAO-CHI JIA

Application: 08/333,680,
filed November 3, 1994

Title: Novel Adenoviral Vectors, Packaging Cell Lines,
Recombinant Adenoviruses and Methods

Assignee: CELL GENESYS, INC.

Accorded Benefit: None

Attorneys: See last page

Address: See last page

Part F. Count and claims of the parties

Count 1

The recombinant adenovirus of claim 1 of the '470 Saito patent.

or

The recombinant adenoviral vector of claim 46 of the '680 Wang application,
wherein the two gene regions are E1 and E2A.

The claims of the parties are:

Saito: 1-31

Wang: 37-48, 52, 54, 56-57

The claims of the parties which correspond to Count 1 are:

Saito: 1-6

Wang: 46, 56

The claims of the parties which do not correspond to Count 1, and therefore are
not involved in the interference, are:

Saito: 7-31

Wang: 37-45, 47-48, 52, 54, 57

Part G. Heading to be used on papers

The following heading shall be used on papers filed in the interference. See
§ 18 of the STANDING ORDER.

Paper ¹

Filed on behalf of [name of party]
By: Name of lead counsel, Esq.
Name of backup counsel, Esq.
Street address
City, State, and Zip-Code
Tel:
Fax:

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

IZUMU SAITO, YUMI KANEKAE
and MICHIO NAKAI

Junior Party,
U.S. Patent 5,700,470

v.

QING WANG, MITCHELL H. FINER
and XIAO-CHI JIA

Senior Party
Application 08/333,680

Patent Interference No. 104,755 (CAS)

TITLE OF PAPER

¹ Leave a blank line because the board assigns the paper number.

Part H. Summary of dates for taking action

Times for taking action are set out in the following sections of the STANDING ORDER:

1. **§ 7:** date for identifying lead and backup counsel.
2. **§ 8:** date for identifying any real party in interest.
3. **§ 9:** date for requesting copies of involved and benefit applications and patents.
4. **§ 17:** date for filing list of proposed preliminary motions.
5. **§ 19:** date for accomplishing certain discovery.
6. **§ 20:** date for filing clean copy of claims.
7. **§ 21:** date for filing clean copy of claims in cases with drawings and/or claims containing a means plus function limitation.
8. **§ 23:** dates for filing oppositions to Rule 635 miscellaneous motions and dates for filing replies to oppositions.
9. **§ 33:** date for objecting to admissibility of evidence.
10. **§ 34:** date for serving supplemental affidavits or evidence to respond to objection to admissibility of evidence.
11. **§ 35:** dates when cross-examination can take place.
12. **§ 45:** dates for taking action with respect to settlement discussions

Part I. Order form for requesting file copies

FILE COPY REQUEST

Interference 104,755 (CAS)

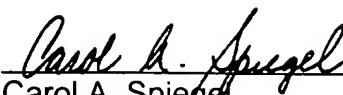
A copy of Part E of this NOTICE DECLARING INTERFERENCE should be attached to this FILE COPY REQUEST, with a circle by hand around the patents and applications for which a copy of a file wrapper is desired.

To facilitate processing of this FILE COPY REQUEST, the following information should be included:

1. Charge fees to USPTO Deposit Account No. _____
2. Complete address, including street, city, state, zip code and telephone number (do not list a Post Office box inasmuch as file copies are sent via commercial overnight courier).

Telephone, including area code: _____

Part J. Signature of administrative patent judge



Carol A. Spiegel
Administrative Patent Judge

Date: March 6, 2002
Arlington, VA

Enc:

Copy of STANDING ORDER

Copy of order used for setting times for taking action in the preliminary motion phase of the interference (ORDERPM6)

Copy of order used for setting times for taking action in the testimony and briefing phases of the interference (ORDERTE6)

Copy U.S. Patent 5,700,470

Copy of claims of 08/333,680

DECLARE.007
Revised September, 2000
(replaces DECLARE.006.1)

cc (via Federal Express):

Attorney for Saito
(real party in interest
SUMITOMO PHARMACEUTICALS COMPANY):

SUGHRUE, MION, ZINN, MACPEAK & SEAS
2100 Pennsylvania Avenue, NW
Washington, DC 20037

Attorney for Wang
(real party in interest
CELL GENESYS, INC.):

Linda R. Judge, Esq.
CELL GENESYS, INC.
322 Lakeside Drive
Foster City, CA 94404

INTERFERENCE DIGEST

Interference No. 104,755

Paper No. 34

Name: Qing Wang et al.

Serial No.: 08/333,680

Patent No.

Title: Novel adenoviral vectors, packaging cell lines, recombinant adenovirus and methods

Filed: 11/03/94

Interference with Saito et al.

DECISION ON MOTIONS

Administrative Patent Judge, _____ Dated, _____

FINAL DECISION

Board of Patent Appeals and Interferences, J. W. Saito Dated, 5-2-02

Court, _____ Dated, _____

REMARKS

This should be placed in each application or patent involved in interference in addition to the interference letters.